

REMARKS

Claims 1 through 28 were presented for examination in the present application and remain pending for consideration upon entry of the instant amendment.

Claims 1 through 28 were rejected under 35 U.S.C. 112, second paragraph. The Office Action asserts "It is not clear how the claimed composition comprising polymers and non-polymeric fillers can be made by the Ziegler-Natta catalyst. Independent claims 1, 13, 14, and 17 have been amended to make clear that the Ziegler-Natta catalyst is used to make the bimodal polyethylene composition, thereby overcoming the rejections. Claims 2 through 12 depend from independent claim 1, and therefore, overcome the cited rejections. Claims 15 and 16 depend from independent claim 14, and therefore, overcome the cited rejections. Claims 18 through 28 depend from independent claim 17 and, therefore, overcome the cited rejections. Reconsideration and withdrawal of the rejections to claims 1 through 28 are respectfully requested.

Claims 1 through 8 and 11 through 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,096,014 ("Haffner"), in combination with WO 99/41310 ("Borealis"). Claims 9 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Haffner, in combination with Borealis, and further in view of U.S. Patent No. 5,008,296 ("Antoon").

The Office Action reiterates each of the rejections made in the Final Office Action dated March 27, 2008 regarding the prior art and the obviousness rejections thereof. The Office Action does not offer any new reasons for the rejections but instead rejects all of Applicants arguments previously presented.

The Office Action takes the position that Haffner does disclose polymers prepared using Ziegler-Natta catalysts in view of the fact that Dowlex resins 2517 and 2532 are used in the Examples, in particular in film B. Film B is however a comparative film in Haffner. It is not within the scope of claim 1 and the discussion of film B at the bottom of column 14 specifically makes reference to the fact that the films of the Haffner invention (films A) have

superior cross machine direction break elongation when compared to film B. It is clear therefore that film B is not part of the invention in Haffner.

Rather than use a conventional Ziegler-Natta Dowlex resin, Haffner teaches the use of a Super octene resin (an NG grade) or a metallocene grade. The catalyst used to make Super octene grades is not quoted but in column 4, table A, NG grades are compared to Dowlex 2045, i.e. conventional Ziegler Natta polymers. The message is that NG grades are not conventional Ziegler Natta polymers - they are different.

The closest disclosure to the present invention in Haffner is therefore a film which is not part of the invention in Haffner. In fact, it is the exact opposite of the invention in Haffner. Haffner tells you **not** to use the conventional Ziegler-Natta Dowlex resins of film B because they give you terribly poor break elongation. Claim 1 of Haffner and all the embodiments in Haffner which are identified as being part of the invention use metallocene catalysts or super octene materials. The teaching in Haffner is that you should not use Ziegler-Natta catalysts because these gives terrible results.

The Office Action asserts that the applicant is not considering the prior disclosure as a whole but Applicants respectfully dispute that. Applicants are, in fact, reading what the reference teaches. Applicants are not ignoring what the reference tells you to do and that is what the Office Action would have one of ordinary skill in the art do. Surely overcoming the prejudice in the prior art that using super octene or metallocene resins is essential is an invention. In fact when a bimodal material is used, one does not need the expensive new materials, one can return to the Ziegler Natta materials which Haffner teaches are redundant.

One of ordinary skill in the art reading Haffner would not use a Ziegler-Natta polymer. The entire teaching of Haffner is the exact opposite. The Office Action fails to offer any reason why one of ordinary skill in the art would ignore the teachings in Haffner and use a Ziegler-Natta polymer.

The Office Action argues that the skilled person would appreciate the benefits of using Ziegler Natta polymers in terms of their tensile strength and elongation. Film B has an elongation of 21%. It is an order of magnitude worse than any other film in Haffner. Its CD tensile strength is the 2nd lowest reported. Film B does not have good elongation and does not have good tensile strength. It is the worst performing film in Haffner by far yet the Office Action would have us start from this film and change it to arrive at the claimed invention! Why would one of ordinary skill in the art do that?

The Office Action then expects one of skill in the art to combine the Haffner reference with the Borealis reference. The Office Action has not offered any explanation of why the one of ordinary skill would do that given that the Borealis reference discloses Ziegler-Natta polymers and the Haffner reference teaches you not to use Ziegler Natta ones and in fact shows them to give poor results. As noted above, the only Example which we know uses Ziegler-Natta polymers has the worst results in terms of elongation. Why then does the person skilled in the art combine Haffner with another document disclosing Ziegler-Natta polymers? There are countless thousands of documents which the person skilled in the art could have turned to and he would have turned to one which disclosed other metallocene polymers not one which disclose polymers which Haffner himself shows to be poor.

The Office Action has also not offered any explanation of why the person skilled in the art would change from the unimodal polymers of Haffner to the bimodal polymers of Borealis. It is conceded that bimodal polymers were known when the Haffner application was filed and known when our application was filed, but Haffner does not use them. Where is the motivation to change the unimodal polymer in Haffner to a bimodal polymer? There has to be some reason for one of ordinary skill in the art to make a combination. The skilled person must have some reason to expect that changing to a bimodal material would provide benefit. Where is that reason?

The attack the Office Action makes is exclusively based on hindsight. Starting from Haffner and without knowledge of the claimed invention we do not see how any one would have come across the Borealis reference. Why would one having ordinary skill in the art be looking at a document which does NOT disclose breathable films and which discloses Ziegler Natta polymers which are bimodal when Haffner discloses breathable films based on unimodal polymers that are NOT Ziegler Natta polymers. These documents are opposites.

Combining documents cannot simply be allowable just because they exist there has to be some link between the documents and some reason why the person skilled in the art would combine them. The Office Action has not explained any such link. We have already noted and the Office Action admits that Borealis do not disclose breathable film. Starting from a document which does describe breathable films why does the person skilled in the art find the Borealis reference at all. The Office Action emphasises that it is the combined teachings of the references that matter here but yet does not offer any reasons why you would combine them in the first place. What possible benefit does the Office Action expect the person skilled in the art to achieve by combining the two documents here?

At best what the Office Action wants the skilled man to do is to realise that the problem with film B in the Haffner document is the fact that it is unimodal not that it is made by a Ziegler Natta polymer. Haffner did not realise that - he suggests changing the catalyst - but the Office Action thinks he should have done. By changing to a bimodal ZN catalyst, the Office Action anticipates an improvement in tensile strength.

The main Borealis reference relied upon primarily concerns improvements in impact strength and stiffness, not tensile strength. In terms of tensile strength at yield, the polymers of the Borealis reference perform less well than the comparative unimodal chromium analogues. On the face of it, the bimodal polymers do not improve tensile strength. In terms of impact strength (dart drop), there is considerable improvement however when using a bimodal material. The bimodal material also improves tear strength.

Haffner measures the tensile strength of his polymers not impact strength or tear strength. Reading the Borealis reference, the results suggest that improving tensile strength using a bimodal polymer is not likely. The skilled man needs to realise however that the comparative examples in the Borealis reference document are Cr polymers not unimodal Ziegler Natta polymers. The Borealis prior art reference actually says nothing about whether the tensile strength will be improved relative to a corresponding unimodal Ziegler Natta polymer. That is something first considered in the instant application.

Nor does the Borealis reference consider elongation - it is only in the instant application that we appreciate the benefits of a bimodal material in terms of elongation. Remember Haffner solves the problem of elongation but using special polymers.

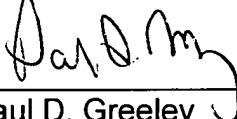
Therefore, Applicants respectfully submit that one of ordinary skill in the art would not have combined the cited art as asserted in the Office Action to disclose or suggest the elements of independent claims 1, 13, 14, and 17. Accordingly, claims 1, 13, 14, and 17 are in condition for allowance. Claims 2 through 12, 21, and 22 depend from independent claim 1 and are in condition for allowance for at least the reasons set forth above with regard to claim 1. Claims 23 and 24 depend from independent claim 13 and are in condition for allowance for at least the reasons set forth above with regard to claim 13. Claims 15, 16, 25, and 26 depend from independent claim 14 and are in condition for allowance for at least the reasons set forth above with regard to claim 14. Claims 18 through 20, 27, and 28 depend from independent claim 17 and are in condition for allowance for at least the reasons set forth above with regard to claim 17. Reconsideration and withdrawal of the rejections to claims 1 through 30 are respectfully requested.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

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